

**VLCF Subcommittee Meeting
DEQ Piedmont Regional Office
Friday, September 8, 2006**

Subcommittee Members Present

R. Brian Ball, Subcommittee Chair
Nicole M. Rovner, Deputy Secretary of Natural Resources
Joseph H. Maroon, Director, Department of Conservation and Recreation
Terri Cofer Beirne
Alexandra Liddy Bourne
William C. Dickinson
Mary Bruce Glaize

DCR Staff Present

David C. Dowling
Rick Hill
Thomas L. Smith
Sarah Richardson
Michael Fletcher

Others Present

David Phemister, The Nature Conservancy
Deb Van Duzee, Virginia Department of Game and Inland Fisheries
Ridge Schuyler, The Nature Conservancy
Larry Durbin, Virginia Department of Taxation
John Josephs, Virginia Department of Taxation
Rex Linville, Piedmont Environmental Council

Mr. Ball called the meeting to order and welcomed attendees. He noted that he had been appointed by Secretary Bryant to chair the subcommittee.

Mr. Ball gave a review of the legislation that requires the criteria to be developed. That authority is found in § 58.1-512 of the Code of Virginia.

No credit in the amount of \$1 million or more shall be issued with respect to a donation unless the conservation value of the donation has been verified by the Director of the Department of Conservation and Recreation, based on the criteria adopted by the Virginia Land Conservation Foundation for this purpose. Such criteria and subsequent amendments shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) but the Virginia Land Conservation Foundation

shall provide for adequate public participation, including adequate notice and opportunity to provide comments on the proposed criteria. The Director shall act on applications within 90 days of his receipt of a complete application and shall notify the taxpayer and the Department of Taxation of his action.

Mr. Ball said the two issues to consider were: 1) what kind of criteria should be adopted to demonstrate the conservation value, and 2) what verification would the DCR director need to use.

Mr. Ball noted that “conservation value” is not defined in the statute. He said that once the criteria are developed the information would need to be included on a tax form.

Mr. Ball noted that the work of the subcommittee needed to be completed by October 1 for the purposes of allowing for a 30-day public comment period.

Mr. Ball asked DCR staff to review the draft criteria with the subcommittee.

Mr. Maroon said that there were several ways to look at this process. He said the evaluation criteria could be viewed as a minimal amount, but that there is another school of thought that says there should be higher standards set for tax credit donations that are \$1 million or more.

Mr. Maroon said that Governor Kaine has a very aggressive goal of protecting an additional 400,000 acres by 2010. He said it was important not to make the requirements so rigorous that people are dissuaded from donating.

Mr. Ball said that the final criteria approved by the Board would be provided to the chairs of the General Assembly finance committees.

Ms. Richardson gave an overview of the draft criteria. She said that DCR had worked with the interagency VLCF task force to develop the draft criteria.

Ms. Richardson noted that there are three things that the changes to the Virginia Code require of DCR and the VLCF.

1. The criteria must be verified by the DCR Director
2. The taxpayer form required by the legislation
3. DCR must submit an annual report

Mr. Richardson said the intent had initially been that the form would embody the criteria. However, in recent discussions with the Subcommittee Chairman and the Director it was determined that a separate product for the explanation of the criteria was required by the Code. She said that the charge for the VLCF is to approve the criteria, not the form.

Mr. Dowling said that one of the challenges is in determining how much information is needed to verify the credit.

Ms. Richardson noted that the process needed to be tied to the Internal Revenue Code.

Mr. Ball asked if the property owner had to place the easement on the property before applying for the tax credit.

Ms. Rovner said that she believed that was the intent.

Mr. Maroon said that the hope would be that the publication of the criteria would help ensure that qualifying easements are filed.

Ms. Bourne asked if the credit was denied if the property owner could remove the easement.

Mr. Maroon said that it could be improved but not removed.

Ms. Bourne said that this could mean folks would feel disenfranchised if they went through the process and did not get the tax credit.

Ms. Rovner said that it was similar to permitting processes. Property owners should work with the agency to ensure they are meeting the established standards.

Mr. Maroon said that every land conservation deal would involve a private or state entity to hold the easement that can help with the development of qualifying easements.

Mr. Dickinson asked what the deterrents were for subdividing parcels to remain under the \$1 million dollar review threshold.

Ms. Rovner said that an easement on an adjacent parcel would trigger a review. There is a provision to aggregate donations of adjacent parcels.

Ms. Beirne asked how the Board would respond to criticism with regard to who applies first. She noted that the larger tracts would take longer to review.

Mr. Maroon said that there was 90 days to complete the review. He said that he envisioned applicants applying to Tax first and then awaiting the verification from the Department of Taxation. DCR would review the easements in the order received.

It was noted that every submission to the Department of Taxation must be copied to the Department of Conservation and Recreation.

Ms. Bourne asked if the Board wanted to give priority to larger tracts.

Mr. Ball said that the VLCF is being asked to develop the criteria. The Department can prioritize projects as needed.

Mr. Maroon said DCR would work closely with Taxation.

Ms. Rovner suggested that larger tracts have their applications in before October 1 to allow time for review within the calendar year.

Mr. Dowling noted that the legislation said the credit should be issued in the order that each complete application had been received.

Mr. Dickinson asked if there were examples from other states that Virginia could use.

Ms. Richardson said most other states do not have criteria.

Ms. Richardson reviewed the handout entitled "Land Preservation Tax Credits Criteria – DRAFT." A copy of this handout is available from DCR.

Ms. Richardson said the document was an amalgamation of the state and federal code.

Statement 1: The donated property must be conveyed for at least one of the following purposes; pursuant to Virginia Code § 58.1-512(A) and Internal Revenue Regulations § 1.170A-14.

Ms. Bourne suggested that under agricultural and forestal use, the word "devoted" should be changed to "designated."

Ms. Richardson noted that under agricultural, forestal and open space sections, the draft document uses language from the tax code. She said that under natural resources and biodiversity staff would work with Mr. Smith and the Division of Natural Heritage to develop appropriate language. Watershed protection is listed as in the state code. Historic preservation is from Code sections and language provided by the Department of Historic Resources.

Ms. Beirne asked why the committee was reinventing the criteria and not using the four purposes as outlined in the IRS code.

Mr. Hill said the values listed in the statute fit with the federal categories.

Ms. Bourne said they are broader at the federal level so that the state can define them. She said she liked how the criteria were broken up for different functions.

Mr. Ball said that there might be need to clarify what an applicant has done to protect water resources.

Ms. Rovner said that protecting water quality is different than protecting the watershed.

Ms. Richardson said that the Department of Historic Resources has suggested that for their purposes, tax credits of over \$1 million should be for properties on the state or national historic registers.

There was discussion regarding how long it would take to put a property on the historic register and whether or not that would place an undue burden on the landowner.

Mr. Phemister said that putting land under an easement is a big deal. He noted that many times a family might have struggled with this issue for years. He said that if there is an historic house or structure, the owner might not be willing to go the next step toward the easement.

Ms. Bourne said that from a policy and revenue perspective, the criteria need to be something the Board can defend to the public.

There was discussion that it would be unusual for someone to just list historic preservation as his or her only criteria. If that is the only qualification, the property should be on the register.

Mr. Dickinson asked about the length and complication of the process to put a property on the historic register.

Ms. Richardson said it would be safe to assume that it is at least a several month long process.

Mr. Ball said that it would be best to make a note of this issue and return to it later when more information was available.

Mr. Maroon said that there should be an area for an automatic check off if the property is already on the historic register.

Mr. Maroon also said that battlefields should be added under historic preservation.

Mr. Dickinson said that Alexandria has gone through a very deliberate public process looking at properties that should be protected. He said there might be other communities that have done this through a hearings process.

Ms. Richardson said another bullet could be added regarding land preserved under public policy.

Statement #2: The conservation easement on the property must protect the purpose(s) for which the property was conveyed.

Mr. Ball noted that the form would ask the landowner to show where they have satisfied the criteria.

Statement #3: If the following resources exist on the property, they must be protected, even if not directly related to the purpose of the conveyance.

It was agreed that this section needed more definition.

Mr. Phemister said there should be consideration of the outrage quotient. For example, if a property qualifies under the historic resources category but there is also forestland and frontage. If the forestland were clear cut with no forestry management the general public would question the tax credit for the land.

Mr. Phemister said the Board should think very carefully about a making sure the process is not too onerous, but that it also should not shy away from the fact that the Commonwealth is spending money to protect core values.

Mr. Dickinson said that urban trees should be noted with regard to historic sites.

Mr. Dowling asked about the need to put that into the easement. He said that would mean the protection of one or two trees in perpetuity.

Ms. Richardson said it might be more of a scenic issue.

A question was asked with regard to protecting forestland. Does that mean the landowner has agreed to BMPs or does it mean the land will return to old growth forest?

A member expressed concern regarding the access requirement for outdoor recreation. It was noted that landowners are concerned about their right to privacy. If they are permitting public access, they want to be able to restrict that if necessary. The wording indicates that the owner would have to give perpetual use to the property.

Ms. Bourne said that these restrictions could keep someone from getting the tax credit.

Mr. Ball said some of this would involve interaction between the donee, the charity and landowner.

Mr. Maroon said that staff would work to clarify the final bullet point in this section.

It was suggested that the bullet "existing public access to outdoor recreation" be removed and included under section #1.

Statement #4: Every easement must provide the following minimum protection standards:

Mr. Dickinson asked about the issue of roads.

Mr. Smith said that he would interpret this as restrictions, but not prohibitions on roads. The new construction of roads would be restricted. Mr. Smith said that with regard to restrictions on roads, the road cannot be built if it destroys the primary purpose of the property.

Ms. Richardson said that the restriction might be that the holder has the right to approve where the road is located.

Mr. Maroon said this section would need clarification.

Ms. Rovner said the Board responsibility was to ensure a level of conservation value being protected. She said the vast majority of lands are easements taken by the Virginia Outdoors Foundation or The Nature Conservancy.

Mr. Phemister said that not every issue would be totally objective.

Mr. Schuyler said that it might be possible to come up with objective safe harbors that satisfy both desires. This would allow the landowners some certainty.

Mr. Maroon said there might be times when the issue would be brought to the Board for clarification.

Mr. Ball said that once the criteria are developed, it needs to be defensible.

Statement #5: The Director of the Department of Conservation and Recreation may waive the minimum protection standards if the applicant can show good cause.

Ms. Richardson said the concern was that the requirements not be too rigid.

Ms. Bourne said that flexibility could be built into the process.

Mr. Schuyler said that the public might be concerned that standards aren't being met because they are too subjective.

Mr. Maroon said that the criteria should say to the fullest extent possible, for example this could be expanded to list what the minimum requirements are.

Mr. Ball said that suggestions for redrafting the criteria should be sent to Ms. Richardson.

Ms. Bourne said that it was important to note that these criteria were asking landowners to do more to get the tax credit. She cautioned that this could cause difficulty in meeting the Governor's land conservation goal.

Ms. Richardson reviewed the draft form. A copy of the draft is available from DCR.

Ms. Beirne noted that the conservation purposes in the form were not consistent with the criteria.

Ms. Bourne asked about the definition of “other historic feature,” item 2f. She asked how this was to be verified.

Ms. Richardson said that there had been discussions that donations over \$1 million would require a site visit.

Ms. Rovner noted that the purpose of the form was to gather information.

Mr. Maroon noted that the form was created prior to the criteria and that they did not match. He noted that staff did not have the preparation time available to edit the form prior to the meeting.

Mr. Ball said that when the criteria are revised, the form could be also.

Mr. Maroon said this version of the form should not be viewed as final draft piece. Mr. Maroon said that the form is technically developed by the Department of Taxation in consultation with DCR. He said he anticipated a form that would have the first two pages for every one then the remainder will be used to evaluate the tax credit if the property is valued over \$1 million.

Mr. Maroon said that the General Assembly is looking for basic information on everyone. He said they would like the larger properties to receive more scrutiny.

Mr. Maroon said that if resources are available it is DCR’s intent to visit each of the sites. He said that because there are tremendous financial implications the information should be verified.

Ms. Beirne said that the form appeared to be creating something different than the intent of the legislation.

Mr. Ball said the federal regulations governing these issues have been in place. He said the General Assembly has articulated other items to consider.

Ms. Beirne asked if the criteria were to be only for verification.

Mr. Ball said the criteria were for determining the conservation value.

Ms. Beirne said this appeared to be making the issue too complicated.

Ms. Bourne said at the last meeting there were concerns about a lack of criteria for the process and that the subcommittee was developed to address those concerns.

Ms. Beirne said that it appeared that conservation purposes were being combined with conservation value. She said that was too detailed an approach.

Ms. Rovner said that people came to the subcommittee with different expectations of 1) having a form for every project designed strictly for creating a report, or 2) having a form to demonstrate conservation value that the Director would verify, or 3) a form that would verify the process.

Mr. Ball said that the conservation value and supporting criteria could not be ignored.

Ms. Beirne suggested that the process should have started with the form.

Ms. Bourne said an environmental or conservation agency should define the conservation value. This is not a financial value.

Mr. Schulyer said there were different issues for the Department of Taxation. He said that this came to the VLCF because of their expertise in conservation value.

Ms. Richardson said staff would work to make the form and criteria use the same language.

Mr. Ball asked for the subcommittee to see one more version of the criteria.

Ms. Rovner said there was confusion as to why both the criteria and a form were needed.

Mr. Maroon said the charge to the VLCF was to adopt the criteria. He said the form would technically be a Department of Taxation document.

Mr. Ball suggested that there be a simpler version of the form for donations under \$1 million. Mr. Ball reiterated that the responsibility of the Board is to develop and approve the criteria. He said the form would be developed between DCR and the Department of Taxation.

Mr. Ball suggested it might be appropriate to have another meeting before the public comment period opened.

Ms. Richardson addressed the next steps.

Ms. Richardson said that previous thought had been to put both the criteria and the form out for public comment. She suggested that, following this conversation, only the criteria be submitted for comment.

Ms. Richardson said the public comment period would be in the month of October.

The committee established a meeting date of Tuesday, October 3 at 10:00 a.m.

With no further business the meeting was adjourned.